IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1) Crl.Appeal No. 274-SB of 1996

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Suresh.

..... Appellant through
Shri Bipan Ghai, Advocate.

Versus

The State of Haryana.

..... Respondent through Ms.Shalini Atri,
Assistant Advocate General, Haryana.

(2) Crl.Revision No. 1277 of 2004

....

Naresh Kumar

..... Petitioner through
Shri Sanjiv Gupta, Advocate.

Versus

Suresh Kumar and another.

..... Respondent no.1 through Shri
Bipan Ghai, Advocate.
Respondent no.2 through
Ms.Shalini Atri, Assistant
Advocate General, Haryana.

Date of Decision: 14.8.2007

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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**Mahesh Grover,J.**

Appellant-Suresh has been convicted and sentenced under Section 306 of the I.P.C. to undergo rigorous imprisonment for five years

and to pay a fine of Rs.2000/-, failing which to further suffer rigorous imprisonment for one year, by the Additional Sessions Judge, Kaithal (hereinafter described as `the trial Court') vide his judgment/ order of sentence dated 18.3.1996/19.3.1996. He has filed the appeal for setting aside his conviction and sentence, whereas complainant-Naresh Kumar has filed the revision petition for enhancement thereof.

As per the allegations contained in the F.I.R., on the night intervening 20/21.7.1993, Pushpa, sister of the complainant, allegedly aged about 13 to 14 years, lost her innocence to the appellant. It was stated that on the fateful day, she was sleeping on the roof of the `chaubara' of her house, whereas along the side of her bed, was the cot of the complainant when the appellant committed sexual inter-course with her without her consent at about 2.00 A.M. Upon her alarm, the complainant woke up and the appellant jumped from the roof. He was,however, apprehended with the help of the neighbours. The appellant was taken to the `chopal' of the village where his family members were called and the panchayat decided to banish him from the village and did not report the matter to the police as it involved the reputation of an unmarried girl.

Five days after the alleged incident, Pushpa is said to have committed suicide by hanging herself.

The F.I.R., in this case, was lodged on 17.11.1993.

The police, after investigation of the matter, challaned the appellant by submitting a report under Section 173 of the Cr.P.C. finding a prima facie case under Sections 376 and 306 of the I.P.C. to be established

against him.

The trial Court accordingly framed charge to which the appellant pleaded not guilty and claimed trial.

The prosecution, in order to prove its case, examined as many as twelve witnesses.

In his statement recorded under Section 313 of the Cr.P.C., the appellant alleged false implication. He further stated that he was a social reformer and was actively pursuing the cause of prohibition in the village as a result of which he has been victimized. He also stated that when he had gone to mourn the death of Pushpa, he suspected the role of Dhajja Ram and his family members. He reported the matter to the police, but it did not initiate any action and, therefore, the present case has been falsely registered against him.

However, no evidence in defence was led.

The trial Court, after examining the entire material on record, came to the conclusion that charge under Section 376 of the I.P.C. was not established against the appellant. However, as noticed above, he was convicted and sentenced under Section 306 of the I.P.C. for having created a situation where a young girl was forced to take her own life.

While assailing the impugned judgment, the learned counsel for the appellant contended that the trial Court had rightly acquitted the appellant of the charge under Section 376 of the I.P.C., but had gone wrong in awarding him the conviction under Section 306 of the I.P.C. for it has not been established as to whether Pushpa had died an unnatural death. There is

no post mortem report on record to establish the factum of an unnatural death. That apart, the F.I.R. was lodged after four months of the death of Pushpa and on 15.8.1993, a panchayat was convened in which the appellant was directed to leave the village for a period of twelve years. Even this report which is on record as Exhibit-PG does not mention the fact of Pushpa having died an unnatural death. Rather,it makes no mention of the death of Pushpa at all.

Learned counsel for the State as well as learned counsel for the complainant-revision petitioner could not controvert the contentions as raised by the learned counsel for the appellant. However, they submitted that the sentence awarded to the appellant is on lessor side.

I have heard the learned counsel for the parties and have perused the record.

The statement of PW4-Naresh Kumar, the complainant is revealing. Concededly, his cot was placed next to the cot of the deceased. In his cross-examination, he has stated that when he woke up allegedly on hearing the cries of his sister, the appellant was naked and had no cloths on him. Pushpa's salwar had also been completely removed which was lying on her cot. She was wearing a `jumper'. He further goes on to testify that his mother and uncle came to the roof within two to three minutes within which Pushpa wore her salwar.

Given the aforesaid circumstances, it is highly improbable that a girl, who has been subjected to forced sexual inter-course, would permit her cloths to be removed without any protest and if she would have raised

any protest, it would have certainly woken up other inmates of the house, especially when the cot of her brother was lying along side. Apparently, the deceased was a consenting party and the trial Court has rightly concluded on this aspect of the matter.

The complainant has given the age of the deceased as 13 to 14 years which was totally belied by the school leaving certificate which has given her date of birth as 11.2.1976, establishing her age as about 17-1/2 years. In the back-drop of the above discussion, there is little hesitation to hold that the deceased was a consenting party and even though, she was subjected to sexual inter-course, the provisions of Section 376 of the I.P.C. would not be attracted.

The next question that arises for determination is as to whether the appellant's conviction under Section 306 of the I.P.C. could be sustained or not. Having thoughtfully considered the entire matter, I am of the considered opinion that the charge under Section 306 of the I.P.C. does not stand established against the appellant for the reason that the whole of the prosecution case has been built on the premise that Pushpa was subjected to forcible sexual inter-course against her wishes, the ignominy of which she could not bear forcing her to take her life, but if the very basis of such a premise is taken away to hold that she was a consenting party, then the appellant cannot be held responsible as there is nothing on record to show either the unnatural death or the role of the appellant to aggravate and propel the deceased to take her life. Even if it is assumed that she took her own life, then it probably was for the reason that she was apparently

consumed by the shame she incurred on being caught by her brother after the incident. The appellant cannot be put on pedestal of a perpetrator and an abettor in the given set of circumstances when there is nothing on record to show that his conduct subsequent to the fateful night was in any manner found to be such which could have forced the deceased into death.

That apart, the learned counsel for the appellant has rightly contended that there is nothing on record to suggest an unnatural death also. The proceedings of the panchayat which are on record as Exhibit PG do not bear out the factum of the deceased having taken her own life. In the absence of any cogent evidence on record which can substantiate the charge under Section 306 of the I.P.C. against the appellant, the appeal is accepted and the appellant is acquitted of the charge against him. As a consequence, the revision petition is dismissed.

**August 14,2007** **( Mahesh Grover )**
**"SCM"** **Judge**